

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ Division

JIM SORVILLO

PLAINTIFF

V.

NO. 60CV-20-_____

PULASKI COUNTY ELECTION COMMISSION;
EVELYN GOMEZ, Chair, Pulaski County
Election Commission, in her official capacity;
JOSHUA A. PRICE, Member, Pulaski County
Election Commission, in his official capacity;
AND KRISTI STAHR, Member, Pulaski County
Election Commission, in her official capacity;
JOHN THURSTON, Secretary of State,
In his Official Capacity

DEFENDANTS

COMPLAINT

Comes now Jim Sorvillo, Plaintiff, through counsel, for his Complaint against
Defendants Pulaski County Election Commission, Evelyn Gomez, Chair, Pulaski County
Election Commission, in her official capacity, Joshua A. Price, Member, Pulaski County
Election Commission, in his official capacity, Kristi Stahr, Member, Pulaski County Election
Commission, in her official capacity, and John Thurston, Secretary of State, in his official
capacity, and state:

1. This is a Complaint filed pursuant to Arkansas Code Annotated Section 7-5-801,
seeking to enjoin the certification of the vote for Arkansas House District 32 in the
November 3, 2020 General Election, in the Pulaski County Election Commission; to
declare that the results of the House District 32 election are invalid; to declare that the
results for election for House District 32 cannot be cured or corrected; and seeking a
new election. A.C.A. § 7-5-801; A.C.A. § 16-111-101, *et seq.*; ARCP 57; ARCP 65.

2. This Court has subject matter jurisdiction over this cause of action. A.C.A. § 7-5-801; A.C.A. § 16-111-101, *et seq.*; ARCP 57; ARCP 65.
3. This Court has personal jurisdiction over the parties, including Plaintiff and the three named Pulaski County Election Commissioners, all of whom are residents of Pulaski County, Arkansas.
4. Venue is proper in this Court. A.C.A. § 7-5-801(b).
5. Jim Sorvillo, Plaintiff, is a resident of Pulaski County, and a member of the Arkansas House of Representatives, currently representing citizens of District 32, which is wholly inside of Pulaski County. His Affidavit is attached hereto as Exhibit 1.
6. Evelyn Gomez, Joshua A. Price, and Kristi Stahr are the three members of the Pulaski County Election Commission, currently serving, and are residents of Pulaski County, Arkansas.
7. John Thurston is the Secretary of State, who has his main offices in Pulaski County, Arkansas.
8. This Complaint concerns the November 3, General Election for 2020, in Pulaski County, Arkansas, and specifically for House District 32, which is wholly within Pulaski County, Arkansas.
9. On Tuesday, November 10, during the processing of ballots from the November 3, 2020, General Election, the Pulaski County Election Commission erroneously added 327 “excess” ballots that were ineligible to be counted in the General Election. The affidavit of Jim Sorvillo, Exhibit 1, sets forth the facts as admitted by the Executive

Director (Director of Elections) for the Pulaski County Election Commission, Mr. Brian Poe. Exhibit 1 is incorporated herein, by reference.

10. The statements publicly made by Brian Poe are also set forth in his written explanation, the November 12, 2020, Memorandum to the Commissioners with the subject: "Error in Tabulation of Provisional Absentee Ballots." Exhibit 2, attached hereto.
11. Later, on November 13, during a Pulaski County Election Commission Meeting, Brian Poe publicly stated that at least 32 of the 327 "excess" ballots, erroneously added to the count on Tuesday, November 10, did, in fact, affect the results of the race in House District 32. Exhibit 1.
12. During the Election Commission Meeting on November 13 (which lasted until approximately 5:30 a.m. on the morning of November 14), Mr. Poe indicated that the provisional ballots approved by the Commission on November 12, and added into the unpublished count by staff during the course of the day on November 13, was some "32 ballots" short of the number ordered by the Commission; Poe indicated that the commissioners "might find" some of those ballots in the boxes labeled "do not count" which contained provisional ballots which were not approved by the Commission; Commissioners, in searching for the missing 32 provisional ballots, which had been previously qualified, found an additional 100 provisional ballots, qualified by the Commission, ordered to be counted, reported to be counted, but still in their sealed provisional ballot envelopes, unopened, and uncounted, for a total of 132 qualified provisional ballots found and to be counted. Exhibit 1.

13. Staff of the Commission, and Mr. Poe, did not provide an explanation, other than that some “duplicates” may have accounted for the shortage of 32 ballots; staff did not provide the commission any explanation why it reported being only 32 ballots short, when commissioners themselves found 132 provisional ballots previously approved for counting, yet uncounted by staff (and therefore indicating that an additional 100 “excess” ballots had again been added erroneously by staff, without approval by, or explanation to, the full Commission). Exhibit 1.
14. On Election Day, at precinct 63, part of which comprises House District 32, one of the most heavily Republican-leaning precincts in Pulaski County, the commission staff failed initially to print and deliver paper ballots to the precinct, although voting at precinct locations is primarily done on paper. Exhibit 1.
15. On Election Day, at precinct 63, part of which comprises House District 32, an unknown number of voters was either unable to vote on paper ballot for House District 32, or voted in the wrong House race, because the correct ballot style was unavailable, until commission staff found a similar ballot style in precinct 73, and transported paper ballots from precinct 73 to precinct 63. Exhibit 1.
16. The unofficial results published by the Pulaski County Election Commission on Saturday, November 14, 2020, at 3:25 a.m., include, at a minimum, these three sets of errors.
17. The unofficial results published by the Pulaski County Election Commission on Saturday, November 14, 2020, erroneously show that, in House District 32, the opponent of Jim Sorvillo received 8,403 votes, while Plaintiff, Mr. Sorvillo received

8,378 votes, a difference of 25 votes. A true and correct copy of the preliminary results is attached hereto as Exhibit 3.

18. The errors created by commission staff in the November 14 preliminary count of votes in House District 32 exceed 32 votes, at a minimum, by admission of Brian Poe, that is, at least seven (7) more than the margin of the difference between the two contestants. Exhibit 1.
19. There were additional problems with the vote counting in Pulaski County, including the “discovery” of some 50 ballots, apparently uncounted, “found” by a commissioner, in an open box, on the counting room floor, at approximately 4 a.m. on November 14; the Commission reviewed these ballots and approved 12 for counting (but they are not expected to impact the House 32 race), and requested additional information from the Clerk concerning 9 ballots (the location of which is unknown).
20. The foregoing information shows that lawful voters in House District 32 have been disenfranchised by the actions of the staff of the Pulaski County Election Commission, which has included unlawful ballots in the November 14 count of votes for the 2020 General Election.
21. On information and belief, the Pulaski County Election Commission is planning to meet on November 16, 2020, to certify the results of the November 3, 2020 General Election.
22. Plaintiff asks the Court to enjoin the Pulaski County Election Commission, and Commissioners Gomez, Price, and Stahr, from certifying the results of the 2020

General Election for House District 32, because the errors in the count are irreparable, and the difference in the margin of difference between the two candidates (25 votes) is lower than the minimum admitted error in the final numbers (32 votes), and there are not any other votes from any other counties involved.

23. Plaintiff asks the Court to enjoin the Arkansas Secretary of State from certifying the results of the 2020 General Election for House District 32, to the General Assembly, to the Governor, and to any other entity or official.
24. Plaintiff asks the Court to declare the results of the 2020 General Election for House District 32 in Pulaski County, to be invalid, and incapable of correction, based upon the errors in the counting disclosed above, in Exhibit 1, and as discovery or freedom of information act requests may subsequently show.
25. Plaintiff asks the Court to declare that only a new election for House District 32 can remedy the errors in the count of the votes, where the errors are irreparable and cannot be corrected post-election.
26. Plaintiff asks the Court for an award of its fees, costs, and expenses, as appropriate.
27. Plaintiff asks the Court for such additional relief to which it may be entitled under the circumstances.

WHEREFORE, Plaintiff prays that the Court grant him the relief he seeks herein; that the Court enjoin the Pulaski County Election Commission, and the three named Pulaski County Election Commissioners, from certifying the results of the November 3, 2020, General Election for House District 32; that the Court enjoin the Secretary of State from certifying the results of the November 3, 2020, General Election for House District 32; that the Court declare the results

of the November 3, 2020, General Election for House District 32 are invalid, and incapable of correction, based upon the errors disclosed hereinabove; that the Court declare that a new election is the only lawful remedy available to avoid the disenfranchisement of lawful voters for the November 3, 2020, General Election for House District 32 in Pulaski County; that the Court award Plaintiff his reasonable fees, costs, and expenses; and for such other relief as appropriate under the circumstances.

Respectfully submitted,

JIM SORVILLO,

PLAINTIFF

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